

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

First Class Mail and Periodicals
Service Standard Changes, 2021

Docket No. N2021-1

**BRIEF OF THE AMERICAN POSTAL WORKERS UNION, AFL-CIO
ON THE POSTAL SERVICE'S REQUEST FOR AN ADVISORY OPINION
ON CHANGES IN THE NATURE OF POSTAL SERVICES REQUEST FOR AN
ADVISORY OPINION ON CHANGES IN THE NATURE OF POSTAL SERVICES:**

***FIRST-CLASS MAIL AND PERIODICALS,
SERVICE STANDARD CHANGES, 2021***

(June 21, 2021)

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I. STATEMENT OF THE CASE

The Postal Service filed its *Request for an Advisory Opinion on Changes in the Nature of Postal Services* on April 21, 2021. The Postal Service's Request seeks the Commission's affirmation of changes the Postal Service intends to make in September to extend the number of days for delivery of First-Class Mail and Periodicals in its service standards. The Postal Service is seeking, in other words, for the Commission to endorse the Postal Service lengthening the amount of time it takes to deliver First-Class Mail and in effect delay the delivery of its primary product and service. The Postal Service has already begun the notice and comment process for making the associated regulatory changes, although that process allows for modifications which the Commission can and should encourage.

From the investigation and analysis the American Postal Workers Union, AFL-CIO ("APWU") performed, there is almost uniform objection from the public and regular postal customers to the Postal Service's Request. The Postal Service admits that it could meet the current service standards. Yet, the Postal Service wants to proceed with cutting service and slowing First-Class Mail so it can put into place untested operational changes in hopes of realizing relatively modest cost savings. Given the significance of the Postal Service's Request, the APWU urges the Commission to advise the Postal Service to delay implementation of its planned service standard changes and focus, instead, on improving performance under the current standards.

II. STATEMENT OF POSITION

The Postal Service's service standard changes are premature and rushed, and their implementation should be delayed, at a minimum, until the Postal Service has

exhausted its efforts to lift performance under the current service standards. The Postal Service's planned changes to slow delivery of First-Class Mail is one of the most significant policy changes the Postal Service can make, and it is making it primarily to facilitate the use of new transportation models that may not achieve the outcomes the Postal Service is hoping for.¹ According to the APWU's analysis, the service standard changes will affect every community in the country, and adversely affect certain communities in violation of the Postal Reorganization Act. The service standard changes and the slowing of First-Class Mail is also likely to cause indelible harm to the Postal Service's reputation and relationship with its customers and the public, undermining the Postal Service's plans for financial growth and recovery.

The Postal Service's performance under the current service standards, while inadequate and facing incredible challenges with the Pandemic, shows potential. As the Postal Service recently reported, national performance is improving.² Now is not the time to abandon this hard-won success and forego improving service. It is especially not the time when the main impetus for lowering service and delivery standards is to preemptively adjust to new transportation models the Postal Service has never used on a wide scale. The Postal Service should actively pursue new transportation models that are financially advantageous but also meet the current standards of service rather than chase a model

¹ The APWU's position is focused on the service standard changes to First-Class Mail.

² The APWU asks the Commission to take judicial notice of the Postal Service's June 17, 2021, press release *USPS Service Performance Continues to Improve During the Third Quarter* (<https://about.usps.com/newsroom/national-releases/2021/0617-usps-service-performance-continues-to-improve-during-the-third-quarter.pdf>) in which the Postal Service notes that its First-Class Mail delivered on-time performance improved nine percent over the second quarter.

of under-performance and degrade the current service standards for First-Class Mail to fit new lower standards.

The Postal Service is putting the cart before the horse. The Commission should urge the Postal Service to reconsider its priorities, and put service ahead of experimental transportation models. Instead of changing its service standards in anticipation of launching untested transportation models, the Postal Service should maintain its current service standards while it tests changes to its transportation model to meet those standards. If the new transportation model is successful in satisfying the Postal Service's statutory mission, objectives, and factors as well as the Postal Service's financial and operational goals, the Postal Service will be in an informed position to determine what service standards changes, if any, need to be made. Lowering service standards first and then chasing transportation models that have never been used widely in the Postal Service is risky, imprudent, and unnecessary. The Commission should rebuke the Postal Service for degrading First-Class Mail service to chase speculative operational improvements. Given the immense importance of service standards for First-Class Mail, the Postal Service should not implement its service standard changes and should focus on improving performance instead.

III. DISCUSSION

In accordance with 39 C.F.R. § 3020.123, the APWU submits this brief in opposition to the Postal Service's plan to establish historically low service standards for First-Class Mail. The Postal Service's plan to intentionally degrade the quality of First-Class Mail service is unprecedented in the modern era. The plan will weaken the public's confidence in the competence and commitment of the Postal Service and undermine a

business survival strategy that is dependent on growth and revenue from those same customers. Lowering First-Class Mail service standards is the wrong tactic for establishing sustainability in the Postal Service. The Commission must serve its statutory purpose so that the Postal Service does not hollow out First-Class Mail and its legal obligations to provide expeditious and efficient public postal services.

The Postal Service's changes to First-Class Mail service standards will undermine the sanctity of public postal services. The Postal Service's Request provides the Commission with an unprecedented opportunity to fulfill its mandate and give voice to the public's concerns. The Commission was created to stand guard over the statutory requirement that the Postal Service "develop and promote adequate and efficient postal services." 39 U.S.C. § 3661(a) and (b). The Postal Service's rush to implement *Delivering for America*, its ten-year strategic plan, with these service standard changes will provide minimal cost savings at the expense of quality service for its defining product. This is the kind of policy change the Commission should closely and skeptically review. Given the extraordinary effort that the public has made to have its voice heard by the Commission, blithe acceptance of the Postal Service's Request would be a true disservice. The APWU strongly urges the Commission to critically review the Postal Service's request and rationale to ensure that whatever plan the Postal Service implements, it does so with the benefit of the Commission's thoughtful and thorough critique.

A. THE POSTAL SERVICE'S FIRST-CLASS MAIL SERVICE STANDARD CHANGES

The Postal Service plans to change its service standards for First-Class Mail that will, put plainly, slow mail delivery. The Postal Service is narrowing the number of

Americans who can expect their First-Class Mail to be delivered within two- and three-days. For many other Americans across the country, First-Class Mail will be subject to delivery standards of four and five days.

In the Postal Service's Request, it describes that it is planning:

- For a two-day service standard to intra-SCF single piece domestic First-Class Mail where the SCF is also the origin P&DCF or the combined drive time between the origin P&DCF, destination Area Distribution Center (ADC), and destination SCF is three hours or less. A two-day service standard would also apply to inter-SCF domestic First-Class Mail if the combined drive time between the origin P&DCF, destination ADC, and destination SCF is three hours or less.
- For intra-SCF and inter-SCF First-Class Mail within the 48 contiguous states where the combined drive time between origin P&DCF, destination ADC, and destination SCF is more than three hours, but does not exceed 20 hours, the Postal Service proposes a three-day service standard.
- For a four-day service standard for inter-SCF First-Class Mail within the 48 contiguous states where the combined drive time between origin P&DCF, destination ADC, and destination SCF is more than 20 hours but does not exceed 41 hours.
- For a five-day service standard within the contiguous 48 states if the drive time between origin P&DCF, destination ADC, and destination SCF exceeds 41 hours.

In the simplest of terms, these changes mean that thousands of communities across the country can expect their mail to take longer to be delivered than it currently is. Fewer postal customers can expect their mail in two days with a new two-day standard limited to postal customers who live or do business within three hours of where their mail is sent from. The further away from where their mail is sent, the longer it will take to receive. Mailers, whether individuals or businesses, who do mailings outside of their immediate area must expect that their mailings will take anywhere from two to five days to be delivered. Once these changes are implemented, there will be no alternative within

First-Class Mail to access today's service standards. In fact, the cost of getting faster service on First-Class Mail comes at a hefty premium of over \$3 more per piece of mail. (USPS Resp. to APWU Req. for Admissions at APWU/USPS-1-1/11.)

The Postal Service's reasons for making these changes are vague and imprecise because they are based on unimplemented models and theories. The rationale the Postal Service most clearly puts forth is an effort to facilitate a new transportation model that relies on less air transport and more consolidated surface transportation. As a transportation model, mail moved by truck is expectedly slower than air. Even with ground transportation of more than a few hours' drive, the Postal Service wants to reduce the two-day standard drive time to provide more time to consolidate mail into fewer and fuller trucks. The Postal Service's angle is that it hopes to meet its service standards by lowering them, redefining "reliability" to mean that customers will know to expect slower First-Class Mail delivery.

The Postal Service anticipates making two types of operational changes to, purportedly, improve cost effectiveness and efficiency. First, by decreasing the First-Class Mail covered by a two-day standard, the Postal Service intends to improve the use of ground transportation using fewer and fuller trucks. (Cintron Testimony, USPS-T-1 at 27.) The Postal Service expects to create an expanded network for First-Class letters and flats that will shift mail to P&DCs so NDCs can be freed up for packages. (*Id.* at 28-29.) The Postal Service wants slower delivery standards so that it can also employ methods to consolidate mailpieces as they move within the network, including concepts such as (1) increasing transfers via aggregation sites, (2) load sequencing, and (3) routing multi-stop lanes. (*Id.* at 28.)

Importantly, these operational methods are ideas and works in progress. The cost-savings and efficiency they provide is hoped for, not certain. Some of these concepts the Postal Service is in the process of implementing; others the Postal Service anticipates. None of them have been used widely within the Postal Service, which has unique qualities that might implicate whether and how these methods work or whether they succeed in achieving the savings or efficiency the Postal Service estimates.

The Postal Service claims that providing consistent and reliable service under the current standards comes at too high of a cost. The Postal Service easily identifies, however, specific actions such as investing in technology, adding labor and equipment, and adding transportation for specific product types or to address problematic lanes that would improve performance under the current service standards. (Cintron Resp. to Mailers Hub Revised Interrog. at MH/USPS-T1-18). Although the Postal Service vaguely asserts these actions will increase operating costs, many are already underway and budgeted for. Long-term investment in mail processing technology is accounted for in the Commission's reform of the rate authority. Adding employees and equipment is already underway as part of the Postal Service's Pandemic recovery efforts. (See Cintron Testimony at n.5 ("...these recent service standard performance figures reflect effects of COVID-19-related workforce and supplier availability issues ... the Postal Service accordingly anticipates potential performance improvements against existing service standards..."); see *also* USPS Resp. to APWU Req. for Admissions, APWU/USPS-1/13, Ex. A *Delivering for America* at 37 (describing plans to increase the workforce).) The Postal Service has shown throughout this matter that it has an aptitude for exploring new

transportation models. By its own assessment, therefore, the Postal Service has the ideas and tools it needs to improve performance under the current service standards.

The Postal Service's Request to take the opposite tact and slow down the mail is not backed up by market surveys or communications with customers to show they are desirous or accepting of these changes. The Postal Service admits that it did not study the impact of lower service standards on low-income communities, the elderly, or customers with physical impairments. (USPS Resp. to APWU Req. for Admissions at APWU/USPS-1/2 and -1/3.) Alarming, given the 2020 election season in which record numbers of voters voted by mail, the Postal Service did not study the impact of lower service standards on Election Mail and election officials. (USPS Resp. to APWU Req. for Admissions at APWU/USPS-1/10.) The Postal Service did not even consult small businesses, much less the individual customer. It is proceeding with a plan that is based on past data and purely internal analysis, and is untested in all respects. (USPS Cintron Testimony, USPS-T-1 at 34-35 ("They are the product of close analysis of the Postal Service's projected costs, volumes, and revenues, taking into account the changing mix and magnitude of the mails.").)

B. APWU STUDIED THE APPLICATION OF THE SLOWER SERVICE STANDARDS TO FIRST-CLASS MAIL

The APWU has found that the Postal Service's Request minimizes the impact of its changes. The Postal Service asserts that "most First-Class Mail would continue to have the same service standard, and most First-Class Mail would continue to have a service standard of 3 days or less." (USPS Request at 10.) The APWU engaged Anita Morrison from Partners for Economic Solutions ("PES") to study the impact of the slower less-quality service the Postal Service has planned. Applying the new service standards

to the Postal Service's data, the APWU found that the assertion that service will not change for most First-Class Mail obfuscates the reality that the service standard changes will impact every community in the country. (See *generally* APWU Rebuttal Test. of Anita Morrison, APWU RT-1.)

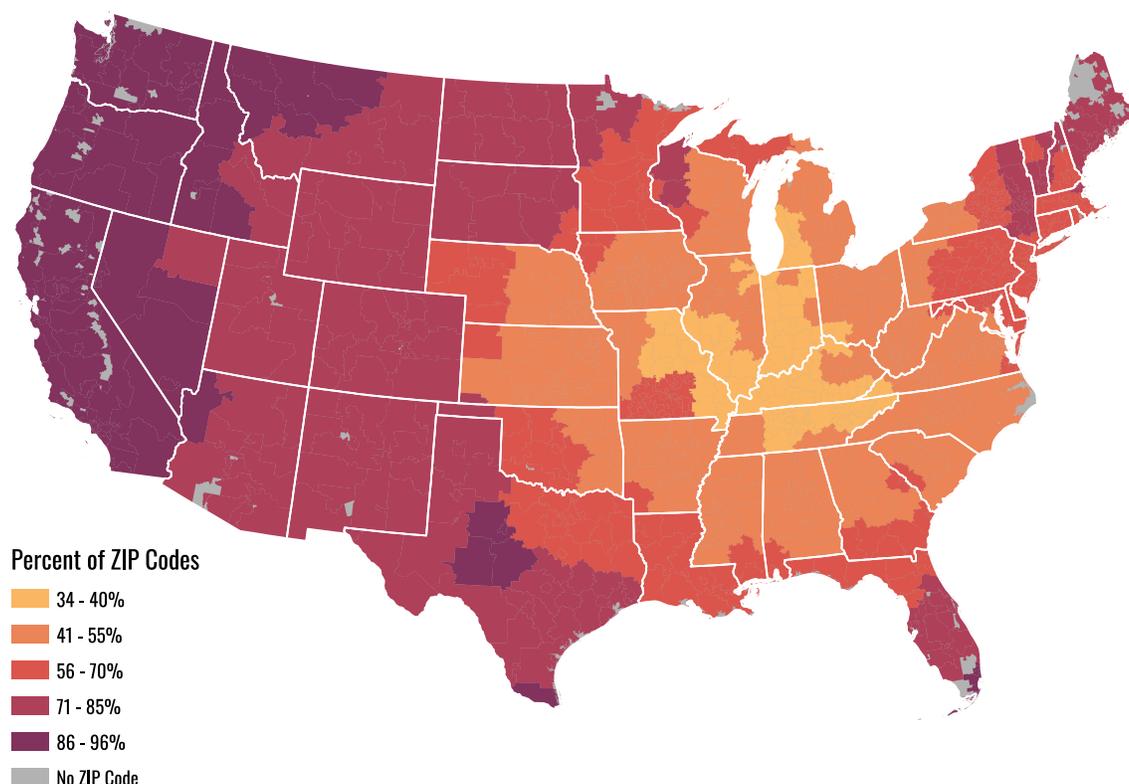
1. Geographic Extent of Service Standard Downgrades

Using a database of pairs of three-digit ZIP codes that match origins and destinations,³ PES calculated the percentage of three-digit ZIP code area origins for which the service standard will add one or two days for each three-digit ZIP code destination area. The result was that every state will experience some downgrade in service to the First-Class Mail delivered within their borders, with the overall range of ZIP code origins impacted by the service downgrades being between 34 to 96 percent. (Morrison Rebuttal Test., APWU RT-1 at 2.) In other words, there is no state without at least 34 percent of ZIP code origins affected by the slower service standards.

As shown in the map below (Morrison Rebuttal Test., APWU RT-1, Exhibit A), the areas most affected by service standard downgrades are concentrated on the West Coast: California, Oregon, Washington and large portions of Nevada, Idaho and Montana. In those states and areas, mail from at least 86 percent of three-digit ZIP code areas will see longer service standards and potentially slower First-Class Mail delivery. Similar levels of slower service standards will also affect west central Texas and the Miami area.

³ Source: USPS-LR-N2021-1/3 - Model Results (Witness: Hagenstein), file 3_Zip3_OD_Pairs.xlsx.

Percent of Origin ZIP Codes from Which Mail Service is Downgraded



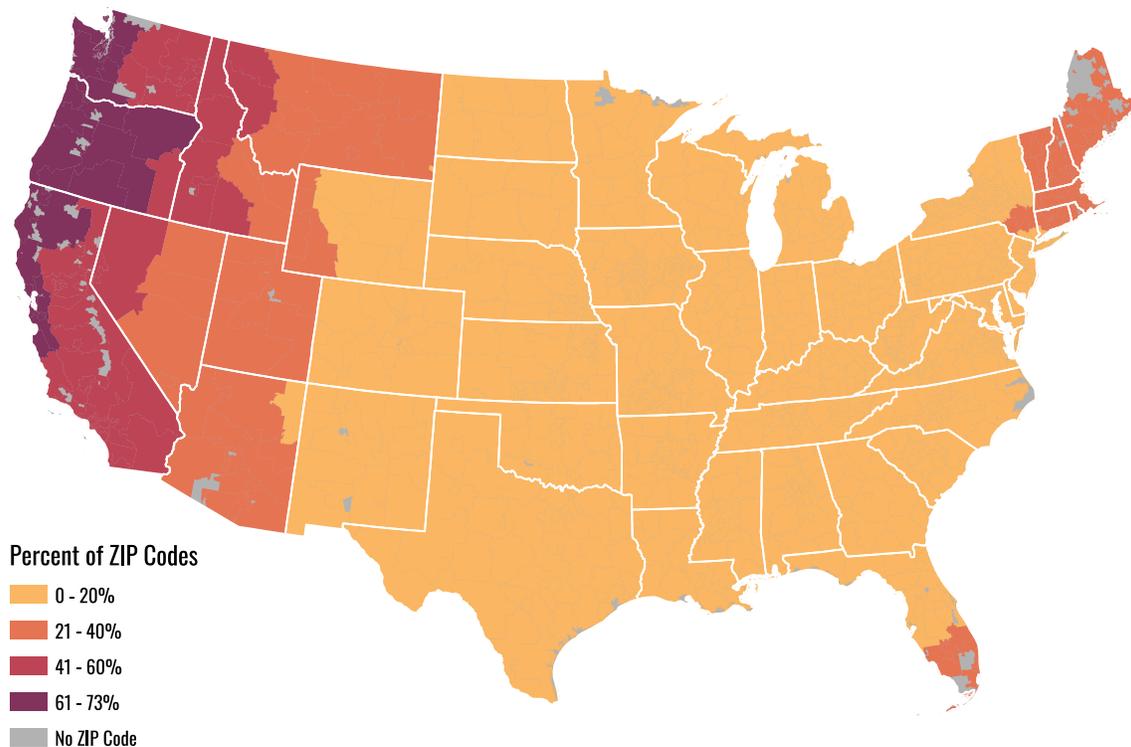
Under the Postal Service's plan, most of the Mountain, Southwest and Northern Plains states are expected to see slower mail delivery in 71 to 85 percent of origin ZIPs. Service to South and Central Florida, Maine, eastern New York, much of Vermont and northwest Wisconsin will have slower standards to a similar degree.

2. Two-Day Downgrade in Service Standards

As a variation on the geographic measure of the planned changes, PES looked at the most-impacted destinations where the slower service standards would add two days to the current delivery standards. Shown on the map below (Morrison Rebuttal Test., APWU RT-1, Exhibit B), two-day increases in service standards cover up to 73 percent of origin ZIP code areas. Destination ZIP codes with the highest share of impacted service

are focused in northwestern California, most of Oregon, and western Washington with delivery standards extended by two days impacting mail from 61 to 73 percent of origin ZIP code areas. The balance of California, Oregon, Washington and western portions of Idaho, Montana and Nevada would see mail in 41 to 60 percent of ZIP code areas in those states delayed by two days.

Percent of Origin ZIP Codes from Which Mail Service is Downgraded by Two Days

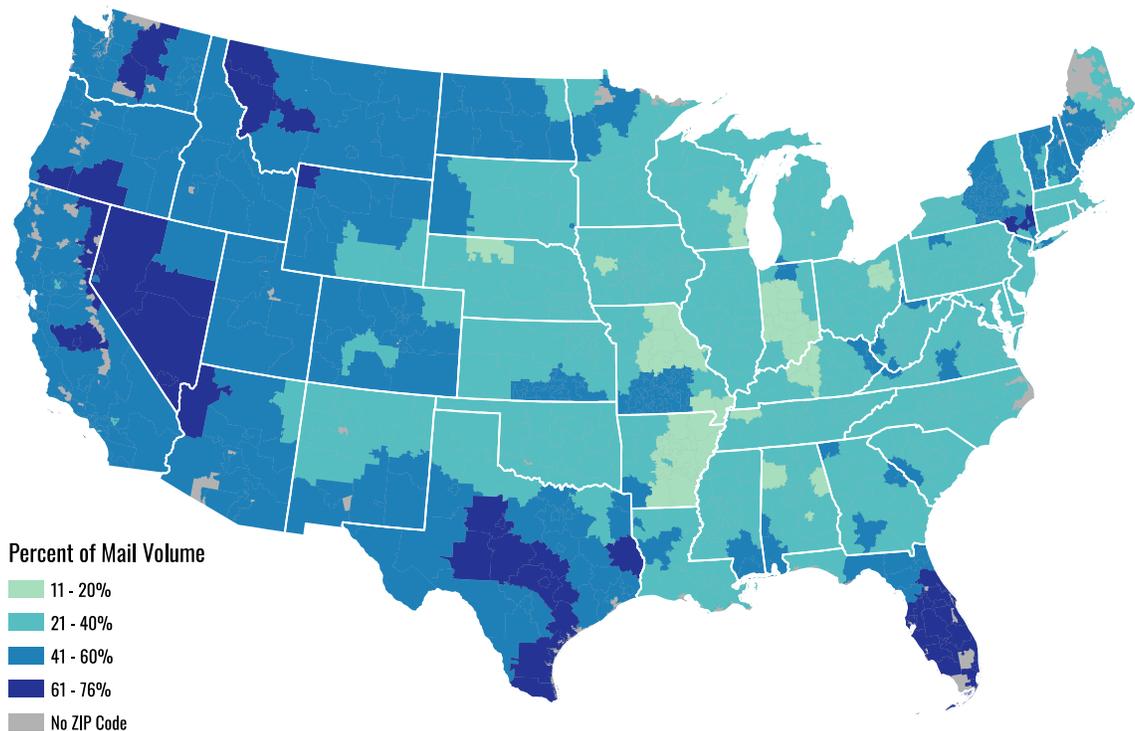


3. Impacts on First-Class Mail Volume

Given the differential in the amount of mail being generated from the various three-digit ZIP code areas, PES also looked at the impact on the volume of First-Class Mail delivered to each ZIP code area. Shown on the map below (Morrison Rebuttal Test., APWU RT-1, Exhibit C), the ZIP code areas are expected to have slower service

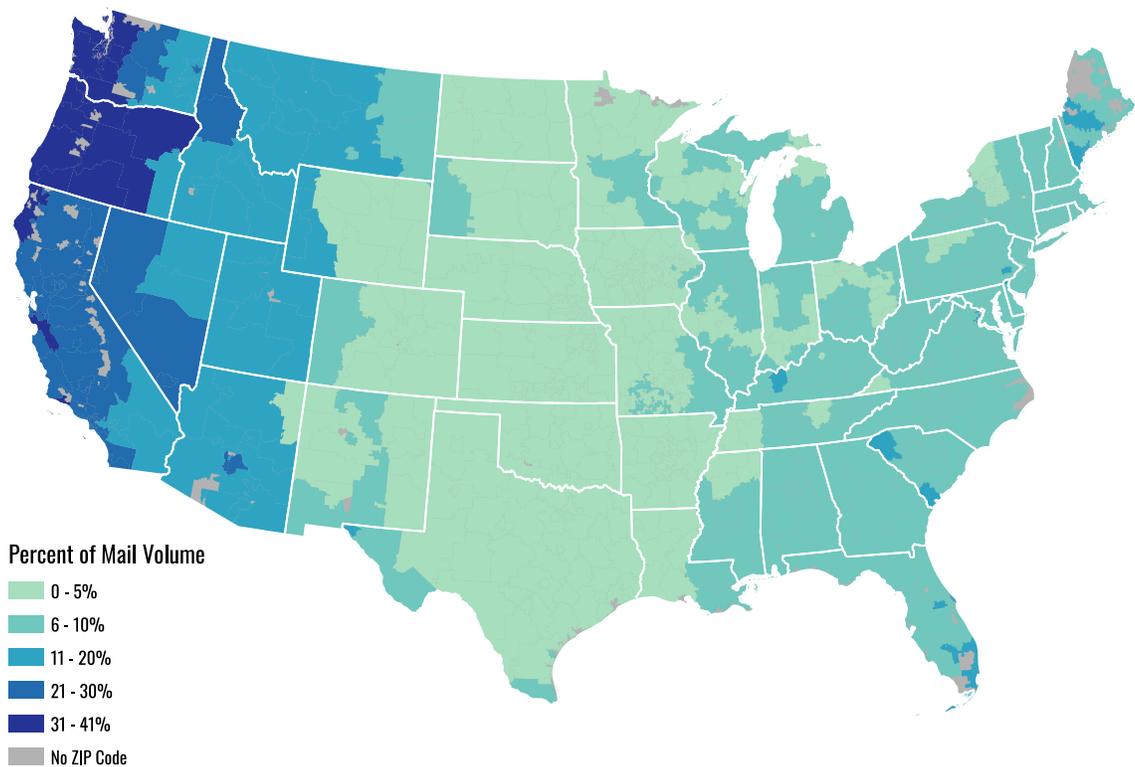
standards for 11 to 76 percent of origin ZIP code areas. The most impacted areas will have service standard downgrades affecting 61 to 76 percent of their First-Class Mail. These impacted areas include central Washington, southern Oregon, central and northwestern California, most of Nevada, northwestern Arizona, western Montana, northwestern Wyoming, central and southern Texas, central and southern Florida, and portions of downstate New York. Slower delivery times from the service standard changes are expected to affect more than 40 percent of First-Class Mail volume in most of the West Coast, Mountain, Southwest and Northern Plains states, much of New England and portions of 14 additional states.

Percent of Destination First-Class Mail Volume Downgraded



As shown in the following chart (Morrison Rebuttal Test., APWU RT-1, Exhibit D), two-day delays in the volume of First-Class Mail delivered could be experienced in most of Oregon, western Washington and northwestern California, ranging from 31 to 41 percent of First-Class Mail affected in those areas. Two-day delays in most of the West Coast, much of Nevada, and northern Idaho would affect 21 to 30 percent of First-Class Mail volume in those areas.

Percent of Destination First-Class Mail Volume Downgraded by Two Days



4. Impacts on In-State Mail Delivery

PES examined the potential effect of the proposed service standards on election mail. To explore the potential state-level impacts if, as the Postal Service assumes, that much election mail is mailed and delivered within a state, PES isolated the three-digit ZIP

code pairs contained within each state and calculated the percentage of those ZIPs with proposed downgrades in service. The following table (Morrison Rebuttal Test., APWU RT-1, Exhibit E) summarizes the percent of in-state ZIP code pairs with proposed service downgrades.

Exhibit E. Percent of ZIP Codes with In-State Service Downgrades					
State	Percent of ZIPs with Service Downgrades	State	Percent of ZIPs with Service Downgrades	State	Percent of ZIPs with Service Downgrades
Alabama	21%	Maine	0%	Ohio	51%
Arizona	0%	Maryland	0%	Oklahoma	6%
Arkansas	11%	Massachusetts	0%	Oregon	28%
California	14%	Michigan	38%	Pennsylvania	24%
Colorado	24%	Minnesota	29%	Rhode Island	0%
Connecticut	0%	Mississippi	44%	South Carolina	22%
Delaware	0%	Missouri	49%	South Dakota	11%
District of Columbia	0%	Montana	42%	Tennessee	35%
Florida	42%	Nebraska	0%	Texas	38%
Georgia	37%	Nevada	0%	Utah	0%
Idaho	0%	New Hampshire	0%	Vermont	0%
Illinois	43%	New Jersey	0%	Virginia	25%
Indiana	30%	New Mexico	32%	Washington	18%
Iowa	19%	New York	41%	West Virginia	17%
Kansas	40%	North Carolina	32%	Wisconsin	9%
Kentucky	46%	North Dakota	50%	Wyoming	20%
Louisiana	24%				

Source: USPS-LR-N2021-1/3 - Model Results (Witness: Hagenstein), file 3_Zip3_OD_Pairs.xlsx, US Postal Service ; Partners for Economic Solutions, 2021.

While in-state service standards in 12 states and the District of Columbia do not appear to be affected by the service standard change, 36 states are facing service

downgrades that could slow the delivery of First-Class Mail, including Election Mail, in nine to 51 percent of their ZIP code pairs. Across the Continental U.S., 28 percent of all in-state pairs will have service standards that the Postal Service plans to downgrade, which could result in the slower delivery of First-Class Mail, including Election Mail.

5. Demographics of the Hardest-Hit Zip Code Areas

PES identified a series of the three-digit ZIP codes that could be the most highly impacted by the proposed service standard downgrades, as measured by the percent of First-Class Mail delayed.⁴ The table in Exhibit F, below, summarizes key demographic factors for these impacted communities. Listed below are the national averages for the key factors, followed by a table in which the highlighted boxes show the three-digit ZIP code areas with measures that differ from the national average by more than two percentage points. (Morrison Interrogatory Resp., USPS/APWU-RT1-1, Exhibit F.)

- Percent of households with a member aged 65 or over in 2019: 15.6%
- Percent of the population that is non-White in 2019: 27.5%
- Percent of households with incomes below the poverty line in 2019: 12.9%
- Percent of households with no access to the Internet in 2019: 13.9%
- Percent of households with no access to a vehicle in 2019: 8.6%
- Percent of the population living in urban areas in 2010: 71.2%

⁴ Some of the impacted ZIP code areas that were IRS processing centers and other areas not associated with a specific geography were not included in the analysis.

Exhibit F. Demographic Characteristics of Three-Digit ZIP Codes with the Highest Percent of First-Class Mail Volume Delayed								
3-Digit ZIP Code	General Location	Percent of First-Class Mail Delayed	Demographic Characteristics					
			65+	Minority Population	Below Poverty	No Internet	No Vehicles	Urbanized Pop %
National Average			15.6%	27.5%	12.9%	13.9%	8.6%	71.2%
988	Wenatchee, WA 100 mi e of Seattle	76%	33.3%	25.1%	12.6%	15.9%	4.8%	30.6%
989	Yakima, WA reservation edge	76%	28.4%	21.0%	16.2%	14.9%	5.0%	45.5%
890	Alamo, NV. N of Las Vegas	75%	33.6%	31.2%	10.4%	12.1%	4.7%	82.0%
891	Las Vegas, NV	74%	26.3%	42.7%	14.4%	14.5%	9.3%	99.3%
936	Miramonte, CA east-central CA	74%	28.9%	30.0%	17.5%	18.2%	5.4%	31.5%
784	Corpus Christi, TX	73%	27.2%	10.4%	16.3%	15.7%	7.4%	98.4%
769	San Angelo, TX. W Texas	73%	28.2%	16.7%	13.1%	18.9%	5.3%	71.4%
864	Lake Havasu, AZ at CA border	72%	48.7%	10.0%	14.3%	16.9%	5.5%	27.6%
329	Melbourne, FL Atlantic Coast	71%	43.1%	16.4%	10.4%	11.2%	4.9%	95.3%
768	Brownwood, TX rural	71%	39.4%	10.2%	14.6%	21.3%	5.1%	0.0%
599	Kalispell, MT	70%	35.5%	5.9%	11.8%	14.0%	3.5%	0.0%
321	Marion County, FL	70%	51.1%	15.9%	13.6%	16.0%	5.6%	74.6%
347	West of Orlando, FL	70%	34.7%	25.4%	11.7%	10.6%	4.3%	80.4%
796	Abilene, TX central	70%	26.6%	26.5%	15.3%	19.9%	5.9%	86.5%
937	Fresno, CA east-central CA	70%	26.5%	38.5%	21.5%	15.8%	9.7%	96.7%
327	Altamonte Springs, FL	69%	32.5%	22.9%	11.6%	10.7%	4.8%	91.3%
779	Victoria, TX sw of Houston	68%	33.1%	16.6%	14.3%	23.2%	6.1%	38.7%
759	Lufkin, TX ne of Houston	68%	33.5%	22.6%	19.8%	20.8%	6.3%	0.0%
328	Orlando, FL	68%	22.1%	38.5%	14.9%	10.8%	6.0%	98.0%
342	Bradenton, FL	67%	50.4%	11.7%	9.6%	12.1%	4.9%	90.9%
893	Ely, NV east-central NV	67%	32.1%	13.2%	13.4%	20.6%	2.8%	0.0%
335	Brandon, FL east of Tampa	67%	32.6%	23.2%	10.7%	9.8%	3.8%	85.2%
338	Lakeland, FL	66%	40.2%	22.0%	14.7%	19.1%	5.4%	74.4%
976	Oretech, OR SW OR	66%	35.6%	12.9%	18.8%	17.6%	6.4%	0.0%
346	Brooksville, FL north of Tampa	66%	42.6%	10.7%	12.4%	12.9%	5.7%	92.0%
961	Alturas, CA. northeast CA	66%	32.3%	13.6%	11.2%	14.1%	5.1%	0.0%
337	St. Petersburg, FL	66%	38.3%	20.6%	12.4%	13.9%	8.2%	100.0%
339	Ft. Myers, FL	66%	47.6%	15.1%	11.7%	11.4%	5.0%	90.0%

Note: Highlights show values more than two percentage points different from the national average.

Source: USPS-LR-N2021-1/3 - Model Results (Witness: Hagenstein), file: 3_Zip3_OD_Pairs.xlsx, US Postal Service; ESRI; Partners for Economic Solutions, 2021.

Many of the impacted ZIP code areas showing the most significant impact among these demographic factors are in California, Texas, and Florida. The characteristics of the impacted areas vary widely among the affected states, but most of the ZIP code areas that could experience the most significant impact from the service standard changes have more than a quarter of their households with individuals 65 years of age and older and between ten and 30 percent of their population being a minority population.

C. THE PUBLIC RESPONSE TO THE ANTICIPATED SERVICE STANDARD CHANGES

The APWU offered the testimony of Stephen DeMatteo, Executive Assistant to the President of the APWU. (APWU Rebuttal Test. of Stephen DeMatteo, APWU RT-2.) Mr.

DeMatteo helped to educate postal workers and organizations that support a fast and reliable public Postal Service about the service standard changes, and their entitlement to have their voices heard through the notice and comment process of the Postal Service's regulatory changes to service standards for market-dominant mail products. (See USPS Request at 1.) What he and the APWU found was an extraordinary outpouring of interest in the Postal Service and near-unanimous objection to the service standard changes.

On May 26, 2021, the APWU launched an online tool through which individuals could submit comments directly to the Postal Service's comment email address, with a copy of their message shared with the APWU. (DeMatteo Rebuttal Test., APWU RT-2 at 2.) Some organizations replicated the online tool and circulated it among their members and constituents. (*Id.*) Those organizations in turn shared the comments collected through their channels with the APWU.

The breadth of organizations the APWU was able to touch around the service standard changes includes non-profit organizations representing senior citizens, civil rights interests, financial reform advocates, election campaigns, rural citizens, and other public-interest advocacy organizations. Among the organizations the APWU knows are particularly active around the service standard changes are Take on Wall Street, Americans for Financial Reform, National Farmers Union, Progress America, Americans for Tax Fairness, Social Security Works, Save the Post Office Coalition, and the Alliance for Retired Americans. (See DeMatteo Rebuttal Test., APWU RT-2 at 3.)

Just as of June 2, 2021, at 11:00 AM EDT, twenty days before the notice and comment period ended, the APWU had received copies of almost 77,000 Federal

Register comments on the service standard changes. (*Id.*) Comments came from individuals in all 50 states, the District of Columbia, Guam, and Puerto Rico. The commenters were spread relatively evenly geographically across the country. Vermont and Maine, the two states with the largest percentage of rural residents, were in the top five states in comments per capita. (DeMatteo Rebuttal Test., APWU RT-2 at 3-4.) New Hampshire, the eleventh most rural state, produced the seventh most comments per capita. (*Id.*) Hawaii, whose residents rely on the Postal Service in ways those in the contiguous states do not, produced the ninth most comments per capita. (*Id.*) The following chart details the number of comments submitted by individuals in each state and territory as of June 2nd:

<u>State</u>	<u>Responses</u>	<u>State</u>	<u>Responses</u>	<u>State</u>	<u>Responses</u>
AK	184	LA	402	OK	318
AL	366	MA	2,207	OR	2,392
AR	261	MD	1,546	PA	3,721
AZ	2,143	ME	577	PR	46
CA	12,869	MI	2,746	RI	283
CO	2,235	MN	1,568	SC	489
CT	1,005	MO	1,275	SD	108
DC	193	MS	153	TN	939
DE	244	MT	254	TX	3,384
FL	4,547	NC	1,755	UT	425
GA	1,072	ND	65	VA	1,381
HI	467	NE	249	VI	1
IA	728	NH	486	VT	340
ID	291	NJ	2,113	WA	3,404
IL	2,914	NM	924	WI	1,926
IN	1,012	NV	680	WV	237
KS	539	NY	5,783	WY	133
KY	584	OH	2,392	Total	76,356

The comments were nearly unanimous in opposing the planned service standard changes. Many commenters shared deeply personal experiences of hardship caused by slow and inconsistent mail service in the last year. The comments included stories of

financial hardship, soured holiday traditions, or serious health concerns while waiting for critical prescriptions or medical information to arrive by First-Class Mail. Commenters overwhelmingly indicated a genuine fear that the proposed service standard changes would permanently slow mail delivery, leading to future and additional hardships for them, their families, and their businesses.

From his review of individual comments, DeMatteo saw several consistent themes. First, commenters indicated they have borne personal hardship because of existing delays in mail service. (DeMatteo Rebuttal Test., APWU RT-2 at 6.) Common examples include lapsed insurance coverage, difficulty receiving checks, and concerns about receiving prescription. Delayed receipt of the recent stimulus payments was raised in a number of comments, and those commenters expressed concern about having no other way to receive future governmental benefits or other payments. (*Id.*) Commenters noted the need to drive long distances to hand-deliver checks to pay bills to avoid late-fees or service cuts. (*Id.*) Many of these commenters were concerned about having no other method to pay bills, receive checks, or conduct business. (*Id.*) Late fees, canceled policies and bounced checks would all mean additional financial cost born by the household mailer. These commenters were concerned that their only alternatives—migrating to online payment systems or private competitors—will leave them less secure, less connected, or paying much more than First-Class Mail rates. (*Id.*)

Second, commenters who are small business owners expressed that they depend on speedy mail service. Receiving orders, shipping goods to customers, sending and receiving payments for goods and services, and paying bills in a timely manner were all areas in which small businesses depend on quality fast mail service. (*Id.*) Even those

small businesses with mailing alternatives available to them were concerned that migrating operations online or using other carriers that would cost more and potentially alienate customers who are accustomed to and comfortable with the mail. (*Id.* at 7).

A third common theme was the high esteem the public holds for the Postal Service and the civic concern at indications of a failing public service. Some commenters compared the United States Postal Service favorably to the mail of other countries, and others generally wrote positively about the Postal Service and postal workers. (*Id.*) However, these comments often stated that the current state of service and plans to decrease service is a dark stain on the Postal Service's proud history. (*Id.*) Commenters urged the Postal Service to focus on meeting and exceeding current service standards rather than lowering its service goals and customers' expectations. (*Id.*)

Respondents in rural areas are particularly concerned about the impact of slower service standards on them and their communities. (*Id.* at 8-9.) Many of these concerns stem from limited alternatives to the Postal Service for rural communities. (*Id.* at 9.) Access to other carriers to send business correspondence and ship goods means inconsistent service from private carriers. DeMatteo expressed concern that the service standard changes risk isolating people in rural areas and perpetuating an underclass situation among the mailing public.

Finally, commenters expressed confusion and fear. The issue of mail-order prescription drugs is most illustrative. Commenters expressed fear that any delay in receiving their prescriptions through the mail would be both costly and harmful to their health. (*Id.* at 9). Although mailings of prescription drugs is not directly affected by these

service standard changes,⁵ the public's misunderstanding of this fact and the distrust in the Postal Service it creates will have a real impact on their support and use of the Postal Service in the future. These comments underscore the close ties of First-Class Mail service and the Postal Service's general reputation. The APWU is concerned that the perception of the Postal Service as reliable only if customers expect slow service adds to a growing negative reaction from users of *all* postal services. It troubles the APWU that more core postal customers may leave and not return to the mail, contributing to greater losses and volume across mail types for the Postal Service.

IV. ARGUMENT

A. The Postal Service Faces Legal Exposure From Slowing Service Standards for First-Class Mail

The Postal Service has certain legal exposure from these service standard changes. The massive public interest shown through hundreds of position statements in this proceeding and the tens of thousands of comments submitted in response to the Postal Service's regulatory changes show a public primed to speak out about degradations in postal services. Last summer's policy change fiasco ended in numerous federal lawsuits,⁶ a reminder that the rule of law constrains the Postal Service's most

⁵ The APWU expects this issue to be raised in the Postal Service's latest Nature of Service Request in First-Class Package Service (FCPS), Service Standard Changes, 2021, Docket No. N2021-2 to change the service standards for First-Class Packages. Obviously, the Commission can see that the Postal Service is rushing several plans to slow mail and packages, but should also observe with regard to the Postal Service's claims that it cannot meet its current standards that the Postal Service is intending to deliver some First-Class Packages faster than First-Class Mail. This again suggests that performance under the current standards is not impossible, but a matter of priority for the Postal Service.

⁶ The Commission should take judicial notice of some of these cases, including, *e.g.*, Jones v. USPS, Case No. 1:20-cv-06516 (S.D.N.Y.); NAACP v. USPS, Case No. 1:20-cv-02295 (D.D.C.); National Urban League v. USPS, Case No. 1:20-cv-02391 (D. Md.); Richardson v.

wrongheaded policy changes. The Commission should warn the Postal Service that its bare assertions about legal compliance are insufficient to ward off viable legal challenges.

The APWU also respectfully notes that the Commission's process is opaque to much of the public and stakeholders. A number of individuals who submitted position statements have noted how difficult the process is to follow. If the public has had a difficult time expressing its frustration or hearing from the Commission, there is greater risk to the Commission issuing an opinion that will tread lightly on these critical issues, as several Commissioners have noted. An opinion that rubber-stamps the standard service changes will amplify the Postal Service's real litigation risk.

1. The Service Standard Changes Conflict with the Postal Service's Statutory Mission and Purpose.

The Postal Reorganization Act promises the American public that it will have a Postal Service that operates as a fundamental governmental service. Specifically, 39 USC § 101(a) requires that the Postal Service:

...provide prompt, reliable, and efficient services to patrons in all areas and shall render postal services to all communities. The costs of establishing and maintaining the Postal Service shall not be apportioned to impair the overall value of such service to the people.

This provision goes on the mandate in subsection (e) that:

In determining all policies for postal services, the Postal Service shall give the highest consideration to the requirement for the most expeditious collection, transportation, and delivery of important letter mail.

And 39 U.S.C. § 101(f) requires that:

Modern methods of transporting mail by containerization and programs designed to achieve overnight transportation to the destination of important

USPS, Case No. 1:20-cv-02262 (D.D.C.); Pennsylvania v. DeJoy, Case No. 1:20-cv-04096 (E.D. Pa.); and State of Washington et. al v. USPS, Case No. 1:20-cv-03127 (E.D. Wa.).

letter mail to all parts of the Nation shall be a primary goal of postal operations.

2. Objectives and Factors

Setting service standards requires the Postal Service to meet statutory objectives and factors. 39 U.S.C. § 3691(b) and (c). The most relevant Objectives in this matter are the first three, and they include:

- (A) To enhance the value of postal services to both senders and recipients.
- (B) To preserve regular and effective access to postal services in all communities, including those in rural areas or where post offices are not self-sustaining.
- (C) To reasonably assure Postal Service customers delivery reliability, speed and frequency consistent with reasonable rates and best business practices.

39 U.S.C. § 3691(b)(1).

The Postal Service also must consider an additional eight factors against which it must measure its policies. These include:

- (1) the actual level of service that Postal Service customers receive under any service guidelines previously established by the Postal Service or service standards established under this section;
- (2) the degree of customer satisfaction with Postal Service performance in the acceptance, processing and delivery of mail;
- (3) the needs of Postal Service customers, including those with physical impairments;
- (4) mail volume and revenues projected for future years;
- (5) the projected growth in the number of addresses the Postal Service will be required to serve in future years;
- (6) the current and projected future cost of serving Postal Service customers;
- (7) the effect of changes in technology, demographics, and population distribution on the efficient and reliable operation of the postal delivery system; and

- (8) the policies of this title and such other factors as the Postal Service determines appropriate.

39 U.S.C. § 3691(c).

3. The Service Standards May Not Satisfy the Requirements of the Law

Obviously, the Commission is not a court of law and this is not a proceeding to fully and accurately assess the Postal Service's legal liability. The Commission has a duty and responsibility, however, to consider the lawfulness of the Postal Service's service standard changes and advise whether there is a significant possibility that the Postal Service and the Commission will be embroiled in litigation of viable challenges.

The Postal Service is dangerously far afield of meeting its legal obligations, both the statutory requirements as well as the regulatory objectives and factors. 39 U.S.C. § 101(a) requires the Postal Service to provide "prompt, reliable, and efficient services" in all areas and provide postal services to all communities. The slower service standards call the Postal Service's compliance with this mandate into question. The APWU's preliminary analysis of the impact of the slower service standards on areas and communities shows that certain communities are disproportionately impacted by the changes. Geographically, communities on the West Coast and in Texas and Florida will be disproportionately hurt as compared to communities in other parts of the country or even within the same state. Because the law distinguishes in Section 101(a) between "areas" and "communities," it is possible under the law to define communities in different ways. When the APWU investigated different communities, it looked within states at cohorts such as people over 65 years old, non-White, below the poverty line, without access to the Internet or a car, and living in an urban area. The APWU found that many of these communities are likely to experience the slowest First-Class Mail service. For

some of these communities, this degradation of service is tantamount to depriving the communities of real First-Class Mail service. The disparate impact of slower service, especially on communities that are the most dependent on First-Class Mail and have the fewest alternatives to the Postal Service, is hardly consistent with the Postal Service's mandate in Section 101(a).

There is a strong reason to conclude that the Postal Service's slower service standards also fail to meet the requirement in Section 101(e) that the Postal Service "give the highest consideration" to providing the "expeditious collection, transportation, and delivery of important letter mail." To the contrary, switching to a transportation policy that is the slowest option for mail travelling coast to coast is hard to reconcile with the Section 101(e) directive. Even with the long-existing challenges of air transportation, the Postal Service over the years has met higher service standards. Abandoning the pursuit of better service also abandons the high priority that expeditious delivery is supposed to have in the Postal Service's policy-setting.

Moreover, the Postal Service's plan cannot be squared with the "primary goal" of achieving overnight transportation of "important letter mail" in Section 101(f). As a contrast to its plans for First-Class packages for which the Postal Service intends to move some package volume from three to two-days expanding the current two-day reach for packages, the Postal Service is taking the opposite approach with First-Class Mail. (See N2021-2 United States Postal Service Request for Advisory Opinion on Changes in the Nature of Postal Services, at 2-3.) If both plans are implemented, the Postal Service will, by design, be moving First-Class packages faster than the corresponding First-Class

letters. This hardly demonstrates compliance with Section 101(f)'s demand that it be a "primary goal" of the Postal Service to move letters overnight.

The landscape only gets worse when trying to reconcile the Postal Service's plan to slow down First-Class Mail with the regulatory objectives and factors for nature of service changes. Slowing down First-Class Mail, the hallmark product of the Postal Service, clearly does not enhance the value of that mail to either senders or recipients required by Objective (A) of 39 U.S.C. § 3691(b)(1). Judging from the results of the APWU's preliminary analysis, additional analysis may very well yield evidence that rural communities will lose out on regular and effective service required by Objective (B) as the diminished quality of First-Class Mail fails to meet the needs of mailers. Objective (C) is also not met as the historic reliability, speed and frequency of First-Class Mail is sacrificed for the Postal Service's strategic plan. Against the reality of the aggressive rate increases the Postal Service is proposing at the same time as it looks to slow down service, see USPS Notice of Market-Dominant Price Change, Docket No. 2021-2, Objective (C)'s requirement of "reasonable rates" is difficult to reconcile with a reality of the public and mailers paying more for less.

The slower service standards fare no better against the factors in Section § 3691(c). Factors (1), (2), and (3) particularly stand out because of the stark contrast between their principles and the Postal Service's plan. The Postal Service never considered the needs of its customers, including those with physical impairments, as Factor (3) requires. Saying that it satisfied Factors (1) and (2) does not square with the reactions the APWU discovered through the notice-and-comment process. The Postal Service blindly assumes that customers are willing to trade quality for consistency. The

public is clearly stating that it wants both. Failure to satisfy the public can be unlawful, and the Postal Service's refusal to be guided by its legal mandates is concerning. The Commission should take pause, closely analyze, and strongly condemn the Postal Service advancing service standard changes that cannot be reconciled with its legal obligations.

B. The Service Standard Changes Threaten to Undermine the Postal Service's Strategy for Recovery and Growth

Even greater than the risk of legal liability is the risk that the Postal Service's changes will irretrievably damage the reputation of the Postal Service in the eyes of the public. This is not an outcome that should be ignored by the Commission. Promising customers that their service will get worse cannot help but lead to an erosion of confidence in the Postal Service at a time when its strategy for growth and recovery so desperately needs public support.

The Postal Service fails to appreciate the connection between First Class Mail and packages. The Postal Service speculates that customers will distinguish between the quality of service their mail gets from the quality of service for their packages. The Postal Service does not actually know this to be true; it never asked its customers about its reputation and the relationship between service for its products. Moreover, the Postal Service has now filed another Nature of Service case in First-Class Package Service (FCPS), Service Standard Changes, 2021, Docket No. R2021-2, to slow down the delivery standards for some First-Class packages.

As thousands of comments submitted to the Postal Service in the regulatory proceedings and hundreds of position statement submitted in this matter show, the public does make this connection and cares very deeply about service of First-Class Mail.

Thousands of commenters expressed opposition to the service standard changes and doubt about the viability of this important governmental service, given that the Postal Service appears to the public to be offering slower service with no guarantee of increased reliability. The reputation of the Postal Service was already flagging with impulsive policy changes last year, a polarizing new Postmaster General, and struggling performance during the Pandemic. Promising customers that it will take longer to deliver their mail rather than showing a commitment to improving service might be the worst step a fragile Postal Service can take at this time.

There is no question that the Postal Service and the Commission are missing many pieces of the puzzle of how the public will respond to these changes. The APWU has shown that trust in the Postal Service, whether for First-Class Mail or for packages, is at serious risk. Businesses, especially small businesses, will have to pay more for consistent service rather than undergo the expense of realigning their operations just to get slower delivery. For those who can find alternatives to the Postal Service, the APWU fears they will leave the mail and never return. First-Class Mail will be a service of last resort for those without options, which threatens to make the mail more inefficient and expensive.

V. CONCLUSION AND PROPOSED FINDING

The Postal Service is in a delicate situation. No doubt it must address its financial short-comings and chart a new path that is consistent with quality service to the public. Lowering service standards for First-Class Mail should not be part of the plan. It is short-sighted and unfair to millions of Americans who depend on the mail, conflicts with the Postal Service's statutory requirements, and will harm postal customers and the Postal

Service. The APWU urges the Commission to propose that the Postal Service delay its plan until it has taken the steps it has identified to improve performance under the current service standards. The APWU is certain the Postal Service will be inspired by its own efforts, customers, and statutory mission to provide outstanding First-Class Mail service while managing costs.

Respectfully Submitted,

MURPHY ANDERSON PLLC

A handwritten signature in dark ink, appearing to be 'MH', is written over a light blue horizontal line.

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